

## **INJURY COMPENSATION**



## **SUPERVISOR'S MODULE**

### **Introduction**

Although we work diligently to eliminate safety and health hazards in the workplace, job-related injuries and illnesses sometimes occur. When they do, the employer incurs certain liabilities and responsibilities. This course is designed to provide the first-level supervisor with the basic information he/she needs to carry out his/her responsibilities under the federal Employees Compensation Act (FECA) when a subordinate employee suffers from a work-related medical condition. In every case of personal injury or illness that results from employment, there should be close coordination with the Agency's Injury Compensation Program Administrator (ICPA).

Your role as a supervisor is one of the most important elements in the proper administration of the FECA. It falls to you to ensure that your employees are provided the full protection of the law at the same time that you take aggressive action to retain the employee in the active workforce through judicious use of light duty and other appropriate accommodations. This dual role places considerable pressure on you to be fully engaged in the decision making process as it pertains to FECA administration

### **What is FECA?**

The Federal Employees' Compensation Act (FECA), 5 USC 8101 et seq., provides compensation benefits to Federal civilian employees for work-related injuries or illnesses, and to their surviving dependents if a work-related injury or illness results in the employee's death. It is the exclusive remedy for Federal employees for work-related injuries or death.

## **Administration**

The U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP) is the agency charged with enforcing the provisions of the FECA. As such, FECA benefits are paid to the recipients by OWCP and billed back to Dept. of the Army. OWCP resolves any dispute arising between the employee and the employer with respect to entitlements under the FECA.

## **Regulations and Guidance**

The rules applicable to the filing, processing and payment of FECA claims are set forth under 20 CFR part 10.

There are four categories of benefits provided for by the law that you will generally be concerned with:

- Continuation of pay (COP)
- Compensation
- Medical expenses, and
- Death benefits

## **Continuation of Pay (COP)**

The FECA provides that an employee's regular pay may be continued for up to 45 calendar days when totally disabled following a job-related traumatic injury. The intent of this provision is to eliminate interruption in the employee's income while a claim is being processed at OWCP. COP is not considered "compensation" and is therefore subject to income tax, retirement, and other normal deductions.

## **Controverting the Claim**

The term "controvert" means to dispute, challenge, or deny the employee's eligibility for COP. The term "controvert" is also used to apply to the validity of the claim.

An employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employer may include supporting documents such as witness statements, medical reports, records, or any other relevant information.

The employer may not use a disagreement with an aspect of the claimant's report to delay forwarding the claim to OWCP or to compel or induce the claimant to change or withdraw the claim.

COP can be controverted (disputed) for any reason; however, an Agency may refuse to pay COP when:

A	The disability was not caused by a traumatic injury
B	The employee is not a citizen of the United States or Canada
C	No written claim was filed within 30 days from the date of injury
D	The injury was not reported until after employment had been terminated
E	The injury occurred off the employing agency's premises and was otherwise not within the performance of official duties
F	The injury was caused by the employee's willful misconduct, intent to injure himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs
G	Work did not stop until more than 30 days following the injury

### **Documenting A Controversion**

Whenever you question the propriety of COP, or the validity of a claim the first thing to do is contact your FECA Program Administrator for assistance and advice. Any controversion must be based on more than a simple suspicion. You should obtain documentary evidence, if possible, to support the reasons for disputing the claim. This can be in the form of witness statements, medical reports, inconsistencies in employee claims, or other documents as applicable.

## **Compensation**

An employee who suffers employment-related disability may be eligible for one or more types of wage loss compensation. Form CA-7, "Claim for Compensation on Account of Traumatic Injury or Occupational Disease", is the form used to claim compensation for loss of pay resulting from the injury. A claim for compensation must be filed within three years of the date of injury. If a claim is not filed within three years, however, compensation may still be allowed if written notice of injury was given within 30 days or the employing agency had actual knowledge of the injury within 30 days after occurrence.

Compensation payments can be made after wage loss begins and medical evidence shows that the employee is unable to perform the duties of his/her regular job. In a traumatic injury, compensation for loss of wages is payable after a three-day waiting period following expiration of the 45 days of COP. If disability exceeds 14 days beyond the expiration of COP, no waiting days are charged. In traumatic injuries where there is no COP entitlement and in non-traumatic injuries, compensation for loss of wages is payable after an initial three-day waiting period. No waiting period is required when permanent disability exists, or when the disability causing wage loss exceeds 14 days.

An employee can receive compensation payments for as long as the medical evidence shows that total or partial disability is related to the accepted injury or condition. OWCP requires most individuals receiving compensation for disability to undergo medical examinations once a year. This evaluation is usually obtained from the employee's attending physician. OWCP may, however, require the employee to be examined by another physician.

No employer or other person may require an employee or other claimant to enter into any agreement, either before or after an injury or death, to waive his or her right to claim compensation under the FECA. No waiver of compensation rights shall be valid.

## **Medical Expenses**

The Government will pay all covered medical expenses incurred by an employee due to a job-related illness or injury. There is no monetary limit to the amount that will be paid. However, there are some controls, for example, an injured employee is not at liberty to change physicians without OWCP approval, and any surgery other than emergency is subject to OWCP's prior approval. The FECA Program Administrator is the best source of advice and assistance with respect to the technical details of entitlements.

## **Transportation to obtain medical treatment**

The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, 25 miles from the place of injury, the work site, or the employee's home is considered a reasonable distance to travel. The employee should complete an OWCP 957, Medical Travel Refund Request to claim travel expenses.

## **Reimbursement for medical expenses for authorized treatment**

The employee may seek reimbursement for medical expenses by submitting a completed HCFA-1500, American Medical Association Standard Health Insurance Claim Form signed by the provider reflecting that employee paid all or a portion of the bill and a CA-915, Claimant Medical Reimbursement Form to Department of Labor (DOL), along with supporting documentation as explained on the CA-915.

## **Death Benefits**

When a job-related injury or illness causes the death of an employee, death benefits are payable to his/her spouse and/or dependent children. The employer shall immediately report a death due to a work-related traumatic injury or occupational disease to the ICPA by telephone, or facsimile (fax). No later than 10 working days after notification of the death, the employer shall complete and send Form CA-6 to OWCP. Any survivor may file a claim for death benefits using Form CA-5 or CA-5b, which may be obtained from the employer or from the ICPA. The survivor must provide this notice in writing and forward it to the employer. The survivor may also submit the completed Form CA-5 or CA-5b directly to OWCP. The submission should include a copy of the death certificate which has been certified by the issuing authority. It should also include a certified marriage certificate if a spouse is making the claim, and a copy of any divorce or annulment decree if the decedent or spouse was formerly married. The submission should include certified copies of birth certificates of any children for whom claim is made.

## **Initiating Claims**

As a supervisor, you are the Agency's representative when dealing with the employees in your organization. This means that you are responsible for keeping your employees informed of their rights and entitlements, and for ensuring that these rights and entitlements are fully protected. Form CA-10 <http://www.dol.gov/esa/regs/compliance/owcp/forms.htm> and Pamphlet CA-11 <http://www.dol.gov/esa/regs/compliance/owcp/ca-11.htm> have been designed to help you meet your responsibilities in this area.

## **FECA Coverage**

Employees are not generally covered by the FECA for injuries sustained before they reach or after they have left Government premises. Exceptions to this rule include situations where the agency furnishes transportation to and from work, where the employee is required to travel during a curfew or an emergency, or where the employee is required to use his/her automobile during the workday. An employee who believes a particular injury is an exception to the general rule should file a claim with OWCP.

An employee in travel status is covered 24 hours a day for all activities that are reasonably incident to the employment being performed in such status.

An employee is covered while engaged in recreation which he or she is required to perform as a part of training or assigned duties or which occurs in pay status. Employees engaged in informal recreation, such as jogging, while on the employing agency's premises may also be covered, as may employees injured while engaged in activities approved in a documented individual plan developed under a formal agency-managed physical fitness program. Under other circumstances, the agency must explain what benefit it derived from the employee's participation, the extent to which the agency sponsored or directed the activity, and whether the employee's participation was mandatory or optional.

Generally speaking, if an employee is on Government premises for the purpose of performing service and is injured, there is coverage under FECA. Otherwise, complete information regarding the absence from the premises will have to be obtained before a determination can be made.

If the employee is on Government premises for the purpose of performing service and is injured while at lunch, coverage will be extended. Injuries which occur during lunch hour off the premises are not ordinarily covered unless the employee is in travel status or is performing regular duties off premises.

### **Traumatic Injury (CA-1)**

A traumatic injury is defined as a wound or other condition of the body caused by external force, including stress or strain. The employee will need a CA-1 "Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation" to file for this type of injury. The injury must be identifiable as to time and place of occurrence and member or function of the body affected. It must be caused by a specific event or incident or series of events or incidents within a single day or work shift. Traumatic injuries include damage to or destruction of prosthetic devices or appliances, including eyeglasses and hearing aids if they were damaged incidental to a personal injury requiring medical services.

### **Occupational Disease (CA-2)**

An occupational disease is defined as a condition produced in the work environment over a period longer than one workday or shift. The employee will need a CA-2 "Notice of Occupational Disease and Claim for Compensation." It may result from systemic infection, repeated stress or strain, exposure to toxins, poisons, fumes or other continuing conditions of the work environment.

### **Recurrences**

A recurrence is defined as a spontaneous return or increase of disability due to a previous injury or occupational disease without intervening cause, or a return or increase of disability due to a consequential injury. A recurrence differs from a new injury in that with a recurrence, no event other than the previous injury accounts for the disability. The employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. The employee must include a detailed factual statement as described on Form CA-2a.

A recurrence should be reported on Form CA-2a if it causes the employee to lose time from work and incur a wage loss, or if the employee experiences a renewed need for treatment after previously being released from care.

## Medical Treatment /Reports

You should instruct your employees to use Form CA-1 to report injuries immediately and that you maintain an adequate supply of these forms for use by your employees. But what is your first concern when a pallet falls on an employee and he/she is lying unconscious? Such situations can make filling out paper work seem insignificant for the time being. The first priority, of course, is to ensure that the injured employee receives the proper medical attention. You may have to obtain emergency medical assistance in the case described above, or refer him/her to the occupational health clinic if he/she has sustained an injury.

Form CA-16 has been designed for use as the authorizing document for examination and/or treatment of employees who have sustained job-related injuries. Your FECA program administrator will have specific instructions with respect to obtaining/ authorizing initial diagnosis and treatment. In all cases reported to OWCP, a medical report from the attending physician is required and **should be signed by a doctor, not a physician's assistant.**

This report should include:

A	Dates of examination and treatment.
B	History given by the employee
C	Physical findings
D	Results of diagnostic tests
E	Diagnosis
F	Course of treatment
G	A description of any other conditions found but not due to the claimed Injury
H	The treatment given or recommended for the claimed injury
I	The physician's opinion, with medical reasons, as to causal relationship between the diagnosed conditions(s) and the factors or conditions of the employment
J	The extent of disability affecting the employee's ability to work due to the injury
K	The prognosis for recovery, and
L	All other material findings



## **Definition of Physician**

The term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, osteopathic practitioners, and chiropractors within the scope of their practice as defined by State law. Under the FECA, the services of chiropractors may be reimbursed only for treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist. The term "subluxation" is defined as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any X-ray film to individuals trained in the reading of X-rays.

The term "qualified physician" does not include those whose licenses to practice medicine have been suspended or revoked by a state licensing or regulatory authority or who have been excluded from payment under the FECA.

An injured employee is entitled to the initial selection of physician or facility for treatment of an injury. The provider must meet the definition of "physician" under the FECA. An agency may examine the employee at its own facility in accordance with Office of Personnel Management regulations, but the employee's choice of physician must be honored, and treatment by the employee's physician must not be delayed.

Agency personnel may not interfere with the employee's right to choose a physician, nor may they require an employee who claims an injury to go to a physician who is employed by or under contract to the agency before going to the physician of the employee's choice.

Except for referral by the attending physician, any change in treating physician after the initial choice must be authorized by OWCP. Otherwise, OWCP will not be liable for the expenses of treatment. The employee should request any such change in writing with an explanation of the reasons for the request.

## **Forms Availability**

You should have immediate access to an adequate supply of the basic forms needed to file workers' compensation claims, and you should be able to provide an employee with the appropriate form for initiating a claim under his/her specific circumstances. The most important forms for you to be familiar with are Forms CA-1, CA-2, CA-7, CA-16, CA-17, and OWCP-1500.

<http://www.dol.gov/esa/regs/compliance/owcp/forms.htm>

## **Form CA-1**

Form CA-1, "Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation" form CA-1 is the form that you will be using the most. It is the one that an injured employee needs to fill out to report a traumatic injury. It should be completed and turned in to you immediately (never more than 2 days) after the injury. The employee may also sit with you while you input the claim electronically rather than fill out the hardcopy CA-1.

Failure to complete this form within 30 days will result in the employee losing entitlement to COP. Title 20 of the Code of Federal Regulations (CFR), Part 10.110 indicates that the form should be filed with OWCP within 10 days after receipt of notice from the employee. You should check the Form CA-1 to ensure that it has been filled out completely and correctly, and input it electronically immediately.

This includes:

- witness statements
- election of COP or personal leave
- signature, and
- description of injury

After checking sections 1 through 16, complete the supervisor's portion and send it to the ICPA. Of particular interest in the employee's section are items 9, 13, 15, and 16. The site of the accident should be a place that the employee would normally be in the course of performing his/her work. The events leading to the injury should be consistent with the employee's official duties.

The employee must elect either continuation of pay (COP) or sick and/or annual leave for time lost due to the injury, and then sign the form. Witness statements should focus on what the witness observed, whether it was the mishap itself, or behavior before or after the event. In some cases it may be appropriate for you to talk to witnesses before completing your portion of the CA-1 form. The instruction sheet attached to the CA-1 form is fairly complete and should give you all the help you need to complete the form.

## Form CA-2

Form CA-2, "Federal Employee's Notice of Occupational Disease and Claim for Compensation," is the form used for reporting an occupational disease. In addition, the employee should be given two copies of the appropriate checklist, Form CA-35A through H, for the disease claimed (specific checklists have been devised for various conditions in order to facilitate submission of evidence). The injured employee should either fill out a hardcopy CA-2 and give it to you to input electronically or sit with you to provide needed information while you input the claim electronically.

## Form CA-16

When an employee sustains a work-related traumatic injury (CA-1) that requires medical examination, medical treatment, or both, the employer shall authorize such examination and /or treatment by issuing a Form CA-16. The employer shall issue Form CA-16 within four hours of the claimed injury. The responsibility for completing the Form CA-16 lies with the supervisor. Form CA-16 must contain the full name and address of the qualified physician or qualified medical facility authorized to provide service. The physician designated on Form CA-16 may refer the employee for further examination, testing, or medical care. OWCP will pay this physician or facilities bill on the authority of Form CA-16. **The employer should not issue a second Form CA-16.**

Item #6 of Form CA-16 is critical for the proper handling of a particular case. If there is any doubt whether the injury was sustained in the performance of duty, or is otherwise related to the employment, this fact must be noted in item #6. **CA-16 should not be issued for Occupational Disease Claims (CA-2).**

## Form CA-17

Agency personnel should use Form CA-17, Duty Status Report, to obtain interim medical reports concerning the employee's fitness for duty. You should complete the agency's portion of the form by describing the physical requirements of the employee's job and noting the availability of any light duty.

## **Chargeback**

Although OWCP pays compensation benefits directly to the injured employee, the money comes out of the Agency's operating budget. Quarterly, the Department of Labor sends a bill to the Department of Defense which lists compensation costs incurred by Department of the Army. The various Army bases' operating budgets are then reduced by the amount of compensation charged back to them. It is clearly in our interest to use appropriate means of reducing those nonproductive costs which are diverting resources from our mission.

## **Light Duty**

Most organizations have projects of varying duration that place minimal physical demands on employees. Such situations lend themselves to the temporary assignment of individuals whose injuries/illnesses are temporarily and/or partially disabling. A person with a leg injury may not be able to stand and walk continuously, but may be able to work at a desk with her/his foot elevated.

There may also be ongoing work of a permanent nature which is inherently less demanding than the norm for the office. Such work can be assigned to an employee whose disability is partial, but of a more permanent nature. A back injury may result in permanent lifting restrictions, but permit other kinds of work.

## **Reassignment**

An injured employee may be disabled from performing the duties of his/her position, but may be able to perform the duties of another position that poses no medical problems (this position may be in or outside the immediate organization). It is management's as well as the Agency's interest to reassign the employee to a position he/she is able to physically perform.

## **Restructuring**

Situations exist where a job can be redesigned or restructured to eliminate duties that an employee, due to a job-related injury or illness, is unable to perform. The arguments against such efforts are typically not compelling. The costs of providing specially designed tools or work aids, or designing the work around specific physical limitations is generally less costly than hiring and training a new employee all the while paying workers' compensation to someone else.

## **Benefits of Accommodation**

Offering or assigning work to individuals who have suffered a partial disability due to job-related injuries can pay off in several ways. Just a few of these are:

- The Agency avoids paying COP or compensation benefits.
- The Agency retains an experienced employee with valuable skills.
- Work can be therapeutic to an injured employee.

## **Returning Recovered Employees to Work**

The most effective strategies for reducing compensation costs involve preventing employees from ever reaching the workers' compensation rolls. Sometimes circumstances warrant compensation. When this is the case, the earlier we are able to pursue returning an employee to productive service, the less resistance we encounter, and the more effective those efforts are. This section will focus on those long-term compensation cases where conditions have changed to the point that compensation may no longer be the most appropriate avenue.

All of the strategies of accommodation discussed in the previous section, in terms of keeping recently injured people off the compensation rolls, also apply to getting recovered people off those rolls. Light/limited duty, job restructuring, and assignment to a position other than the one held at the time of injury, are all ways to accommodate the disability of a compensation recipient.

Your role in most long-term cases is to work closely with the FECA Program Administrator and to make efforts to accommodate medical limitations which were initially caused by job-related injuries.

Whether you are dealing with a new injury or an old one, attempting to provide suitable employment or helping an employee file a claim, you are responsible for protecting the public's interest while you ensure that employee entitlements are protected. Carrying out those responsibilities may cause you or others some inconvenience or even irritation. This does not, however, lessen your responsibility